

## **REMARKS**

### **Formal Matters**

Claims 1-4, 6-19, 23, 25-30 and 33-46 are pending after entry of the amendments set forth herein.

Claims 1-4, 6-19, 23, 25-30 and 33-43 were examined. Claims 1-4, 6-11, 15-19, 23, 25-30 and 33-43 were rejected. Claims 12-14 were objected to.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

### **The Office Action**

#### **Claims Rejected Under 35 U.S.C. Section 102(b) (Buckman, Jr. et al.)**

In the Official Action of May 3, 2006, claims 1-2, 4, 6-11, 15-19, 25-30, 35 and 41-43 were rejected under 35 U.S.C. Section 102(b) as being anticipated by Buckman, Jr. et al., U.S. Patent No. 5,484,391. The Examiner asserted that Buckman, Jr. et al. discloses a device with an inflatable annular member (Fig. 6, #82) with a central opening (Fig. 7, space through which 76 passes into 82). In the "Response to Arguments" section of the Office Action on page 7, the Examiner indicated that the word "through" is being interpreted to mean "among or between". Applicants respectfully submit that the meaning of "therethrough" (or through) should be interpreted to have a meaning that matches the context of the phrase with which it is used. For example, the definitions of "through" at <http://dictionary.reference.com/browse/through> include: 1. "in one side and out the opposite side or another side thereof". An example of usage of the word "through" when it has this meaning is given as "went through the tunnel". Definition 2 is "among or between; in the midst of". The example of usage of the word "through" when it is given this meaning is "a walk through the flowers". It is respectfully submitted that the context of claim 1 should require therethrough to be fairly given the meaning of definition 1. However, to clarify this, Applicants have amended claims 1, 25 and 41 above to further recite that the opening passes through the organ contacting surface of the inflatable member. It is

respectfully submitted that the device of Buckman, Jr. et al. clearly fails to disclose an opening through the organ contacting surface 86, since the space 76 of Buckman, Jr. et al. that was identified by the Examiner is closed off by the walls 84 of the cup and the diaphragm 86, see column 9, lines 50-52.

Accordingly, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1-2, 4, 6-11, 15-19, 25-30, 35 and 41-43 under 35 U.S.C. Section 102(b) as being anticipated by Buckman, Jr. et al., U.S. Patent No. 5,484,391, as being inappropriate.

**Claim Rejected Under 35 U.S.C. Section 103(a) (Buckman, Jr. et al. in view of Heaven et al.)**

Claim 3 was rejected under 35 U.S.C. Section 103(a) as being unpatentable over Buckman, Jr. et al., U.S. Patent No. 5,484,391 in view of Heaven et al., U.S. Patent No. 5,337,754. It is respectfully submitted that Heaven et al. discloses an inflatable isolation bag and therefore does not cure the deficiencies of Buckman, Jr. et al. in meeting the recitations of claim 1. Accordingly, it is respectfully submitted that claim 3 is allowable for at least the same reasons provided above with regard to claim 1, since claim 3 depends therefrom.

Accordingly, in view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claim 3 under 35 U.S.C. Section 103(a) as being unpatentable over Buckman, Jr. et al., U.S. Patent No. 5,484,391 in view of Heaven et al., U.S. Patent No. 5,337,754, as being inappropriate.

**Claims Rejected Under 35 U.S.C. Section 103(a) (Buckman, Jr. et al. in view of Peng et al.)**

Claims 23 and 33 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Buckman, Jr. et al., U.S. Patent No. 5,484,391 in view of Peng et al., U.S. Patent No. 6,506,149. The Examiner asserted that Buckman, Jr. et al. discloses the claimed invention except for a securing means and a method for securing the device to a stationary object. The Examiner asserted that it would have been obvious to one of ordinary skill in the art to modify the manipulator device of Buckman, Jr. et al. with a means and method for securing the manipulator device to a stationary object, since it is ideal to have retractor systems secured during any type of medically related operational procedure. Applicant respectfully traverses this position. It is respectfully submitted that Buckman, Jr. et al. does not disclose a manipulator, but rather a heart massager, see column 1, lines 8-9. Buckman, Jr. et al. clearly states at column 5, lines 3-6 that each of the massagers of the invention of Buckman, Jr. et al. is manually

operated to accomplish a direct substernal massage of the heart so as to induce alternate cycles of compression and relaxation. Accordingly, Buckman, Jr. et al. teaches away from securing the device to a stationary object, as this would prevent the manual operation to provide alternate cycles of compression and relaxation, thereby destroying the disclosed function of the Buckman, Jr. et al. devices.

Accordingly, in view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 22 and 33 under 35 U.S.C. Section 103(a) as being unpatentable over Buckman, Jr. et al., U.S. Patent No. 5,484,391 in view of Peng et al., U.S. Patent No. 6,506,149, as being clearly inappropriate.

**Claims Rejected Under 35 U.S.C. Section 103(a) (Buckman, Jr. et al. in view of Taylor et al.)**

Claim 34 was rejected under 35 U.S.C. Section 103(a) as being unpatentable over Buckman, Jr. et al., U.S. Patent No. 5,484,391 in view of Taylor et al., U.S. Patent No. 5,906,607. The Examiner asserted that Buckman, Jr. et al. discloses the claimed invention except for performing a coronary artery bypass on the organ. The Examiner further asserted that Taylor et al. discloses a coronary artery bypass procedure on a heart being stabilized with a vacuum source retractor, and that therefore, it would have been obvious to one of ordinary skill in the art to modify the methods of Buckman, Jr. et al. with a coronary artery bypass procedure, because coronary artery bypass procedures are among the most common heart surgeries that require manipulation of the heart, ideally while still beating. Applicant respectfully traverses this position. It is respectfully submitted that Buckman, Jr. et al. does not disclose a manipulator, as noted above, but rather a heart massager, see column 1, lines 8-9. Buckman, Jr. et al. clearly states at column 5, lines 3-6 that each of the massagers of the invention of Buckman, Jr. et al. is manually operated to accomplish a direct substernal massage of the heart so as to induce alternate cycles of compression and relaxation. Further, Buckman, Jr. et al. does not disclose a stabilizer. Quite to the contrary, Buckman, Jr. et al. teaches a method of agitating the heart by applying cycles of compression and relaxation. Thus, Buckman, Jr. et al. teaches away from stabilizing a beating heart, as the opposite of such a treatment as supplied. Accordingly, it is respectfully submitted that the references applied by the Examiner are not properly combinable in the manner suggested by the Examiner, as the only motivation for doing so would be the hindsight motivation gained from a reading of the present disclosure.

Accordingly, in view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claim 34 under 35 U.S.C. Section 103(a) as being

unpatentable over Buckman, Jr. et al., U.S. Patent No. 5,484,391 in view of Taylor et al., U.S. Patent No. 5,906,607, as being clearly inappropriate.

**Claims Rejected Under 35 U.S.C. Section 103(a) (Buckman, Jr. et al.)**

Claims 36-38 and 40 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Buckman, Jr. et al., U.S. Patent No. 5,484,391. The Examiner asserted that Buckman, Jr. et al. discloses the claimed invention except for a kit with a plurality of devices and instructions for using the device. Applicants respectfully disagree, in view of the above amendment of claim 1 and remarks made with respect thereto.

Accordingly, in view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 36-38 and 40 under 35 U.S.C. Section 103(a) as being unpatentable over Buckman, Jr. et al., U.S. Patent No. 5,484,391, as being clearly inappropriate.

**Allowable Subject Matter**

Applicant wishes to extend his thanks to the Examiner for the indication of allowable subject matter in claims 12-14. In response thereto, Applicant has submitted new claims 44-46 above to rewrite claims 12-14 into independent form to include all of the limitations of the base claims (prior to the above amendment of claim 1), and any intervening claims. Accordingly, Applicant respectfully requests allowance of new claims 44-46 in the next Official Action.

**Conclusion**

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-034.

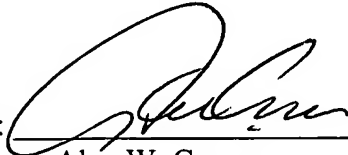
Respectfully submitted,

LAW OFFICE OF ALAN W. CANNON

Date: \_\_\_\_\_

*6/30/06*

By: \_\_\_\_\_



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